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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,793	11/13/2001	Gerard Laurent Buisson	8320M	5852

27752 7590 11/28/2003

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INTELLECTUAL PROPERTY DIVISION  
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CINCINNATI, OH 45224

EXAMINER
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HYLTON, ROBIN A.

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 11/28/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/010,793

Applicant(s)

BUISSON ET AL.

Examiner

Robin A. Hylton

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 9-8-03.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on September 8, 2003 has been entered.

***Drawings***

2. The drawings were received on September 8, 2003. These drawings are approved by the examiner.

***Specification***

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-9 and 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michaud et al. (US 4,742,934).

Michaud teaches the claimed over-cap except for is silent regarding the length of the at least one inner extension **52** extends about the perimeter of the over-cap (only that the extensions are at the corners of the perimeter) or an intersection of points bounding the at least one extension.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the over-cap of a triangular shape since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art as taught by Michaud at column 3, lines 57-59.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the inner extensions less than about 70% of the perimeter of the over-cap, since it

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has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. Doing so is an obvious matter of choice for spacing the detents for easy removal from an associated container yet allow for maintaining a secure fit of the lid on the associated container.

Similarly, it has been obvious to one having ordinary skill in the art at the time the invention was made to provide the inner extensions at a distance bounded by intersecting points 20% along two intersecting imaginary lines of the over-cap.

6. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michaud in view of Blanchard (US 4,026,459).

Michaud teaches the claimed over-cap except for the flange comprising an upper, outwardly extending portion and a lower, downwardly extending portion.

Blanchard teaches it is known to provide a cap flange having an upper, outwardly extending portion and a lower, downwardly extending portion.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the over-cap of Michaud with both an upper, outwardly extending portion and a lower, downwardly extending portion. Doing so provides additional support for the container skirt outer peripheral portion.

#### ***Response to Arguments***

7. Applicant's arguments filed September 8, 2003 have been fully considered but they are not persuasive.

Regarding applicant's remarks at page 8, paragraphs 3 through 4, an affidavit is not necessary nor is an additional reference. It can be seen in figure 2 of Michaud that the detents **52** each extend less than 70% of the perimeter of the over-cap. Applicant's attention is directed to the figure for further consideration.

Regarding applicant's remarks at the paragraph bridging pages 8 and 9, Michaud does not teach away from the claimed invention. The skirt of Michaud's lid must be continuous or it would not remain on the container. The skirt is not uniformly continuous, but is nonetheless continuous. A careful review of the drawing figures will reveal to applicant the skirt is indeed continuous.

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**Conclusion**

8. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

9. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-7306 on the date shown below.

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bemby at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH  
November 26, 2003

  
Robin A. Hylton  
Primary Examiner  
GAU 3727